IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5415 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HIRABHAI JIVABHAI KANGAD THRO' KAMLESH H KANGAD

Versus

STATE OF GUJARAT

Appearance:

MR BP GUPTA for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 3, 4

MS PJ DAVAWALA for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/08/2000

ORAL JUDGEMENT

1. The petitioner abovenamed has preferred this petition under Articles 14, 19, 21, 22 and 226 of the

Constitution of India challenging the order of detention of the petitioner dated 15.5.2000 passed by the third respondent directing the detention of the petitioner in Central Jail at Ahmedabad in view of the provisions made in section 3(2) of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980.

2. The facts of the case may briefly be stated as follows :

That the third respondent conducted some inquiry and thereafter, came to the decision that the petitioner was required to be detained in accordance with the aforesaid provisions of law and, therefore, the said order was passed on 15.5.2000 detaining the petitioner in view of the section 3(2) of the said Act.

The petitioner has challenged the aforesaid order of detention on various grounds. However, at the time of arguments learned advocate for the petitioner has restricted his arguments to the point that the documents supplied by the respondent to the petitioner were not legible and, therefore, the petitioner was prevented from making effective representation against the aforesaid order of detention and, therefore, his statutory right of making effective representation has been taken away and the same is in violation of principles of natural justice. Therefore, the petitioner claims that the petitioner had a valuable right of making the representation against his detention and since, the petitioner was not in a position to avail of the statutory benefits, detention cannot be sustained and, therefore, the petitioner has prayed for appropriate writ, order or directions for quashing and setting aside the aforesaid order of detention dated. 15.5.2000.

On receiving the petition, rule was issued on 12.6.2000, respondents have been served and appearance has been made on behalf of the respondent. Mr. Patel, learned AGP appears for respondent nos. 1, 3 and 4. Ms. P.J.Davawala, learned Additional Sr. Standing Counsel appears for respondent no.2. I have heard Mr. Yatin Oza, learned Sr. Counsel with Mr B.P.Gupta, learned Advocate for the petitioner. Mr. Patel for respondent nos.1,3, and 4 and Ms. Davawala for respondent no.2. I have perused the papers shown to me during the course of arguments by the learned advocates for the parties. Since the arguments have been restricted to the point of non-supply of legible documents to the petitioner, the discussion and decision are also restricted on this short ground to dispose of the petition.

Learned advocate for the petitioner has argued that the sale register was seized and it was relied upon by the competent authority for passing the order of detention of the petitioner. It is his submission that at page- 171 an entry has been placed from the said sale register. It has also been argued that at Sr. no.3 there is a name of one consumer whose name actually appeared to be Ramabhai Bhagabhai, but that name was been scored off and in fact, another name has been substituted which is not legible on the face of it. The documents were shown to Mr. Patel, learned AGP who stated that it is not possible to read out the name which has been substituted for the original name Ramabhai Bhagabhai in the said entry. This would mean that at least one name in this register at page 171 is not clearly legible.

Now, it is an admitted position that this document is an important, relevant and material one which has been relied upon by the competent authority for deciding the issue of detention. The petitioner has been detained under the detention order even on the basis of this document which is not fully and clearly legible.

Now, it is very clear that this register is one of the considerations for detaining the petitioner and it can be said that it is one of the foundation for arriving at a decision for detaining the petitioner under the aforesaid provisions of law. Therefore, this has to be treated as material and relevant document for the purpose of deciding the matter. Now, if the documents as aforesaid are not clearly legible, it would not be possible for the petitioner to make effective representation against his detention and to make effective representation is a statutory right of the petitioner and if that right has been taken away, it can be said that the petitioner is deprived of his statutory right of making effective representation. It is to be seen that the detention order can be passed and can also be revoked at any point of time and the same can be done only if the proper material is placed before the competent authority. Therefore, it is necessary for the petitioner to make effective representation and for making effective representation, it is necessary to have all materials. As stated above, some documents are not fully legible and, therefore, it was not be possible for the petitioner to know the contents of the said pages of the said documents and therefore it was not possible for the petitioner to make effective representation.

In this view of the matter I find a decision of

this Court in Special Civil Application No. 618 of 1999 dated 3.3.2000 (Coram : B.C.Patel,J). Para. 3 of the said judgment reads as follows :

> Without addressing about legality of the grounds of detention, the learned advocate for the petitioner submitted that the petition is required to be disposed of on a short ground as the papers supplied to the detenu are not legible. In view of this, the detenu is deprived from making effective representation. He further stated that the all papers are not illegible but some papers are illegible and as a result of which, his right has been adversely affected. Mr. Patel, learned AGP after going through the papers, is not in a position to state that all the papers are legible, some of the papers are illegible. Suffice it to say that the same has deprived the detenu from making effective representation and hence the detention order requires to be quashed and set aside. The detention order passed against the detenu is hereby quashed and set aside. The detenu shall be released forthwith if he is not required in any other case. The petition is allowed. Rule is made absolute.

There is no reason to disagree with the aforesaid observations of this Court made in the said petition by the learned Single Judge of this Court. In the present case also it is found that some entries on some pages referred to above with respect to the names of the consumers are not fully legible and, therefore, the petitioner was deprived of his valuable right of making effective representation against his detention. In that view of the matter the facts of the case in the aforesaid matter clearly cover the facts of the case before me also.

In the circumstances, when the petitioner has been deprived of his valuable right of making effective representation against his detention, the order of detention can not be sustained and it is required to be quashed and set aside.

For the reasons stated above, this petition is required to be allowed and the order of detention is required to be set aside. Therefore, the present petition is allowed and the order of detention passed against the petitioner on 15.5.2000 placed at Annexure-A to the petition is ordered to be quashed and set aside.

The petitioner abovenamed shall be released forthwith, if not required in any other case. Rule made absolute with no order as to costs.

(D.P.Buch,J)

(Vipul)